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ORIGINAL

MAIL ORDER CONSUMER PROTECTION AMENDMENTS OF 1982

COMPLETED

OCTOBER 4, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FORD of Michigan, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 7044]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 7044) to amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Mail Order Consumer Protection Amendments of 1982".

CEASE AND DESIST ORDERS; "MIRROR IMAGE DOCTRINE"; TEST PURCHASE AUTHORITY

SEC. 2. (a) Section 3005(a) of title 39, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (2) the following new paragraph:

"(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.".

(b) The first sentence of section 3005(d) of title 39, United States Code, is amended—

(1) in paragraph (1), by striking out the last "or";

(2) in paragraph (2), by striking out the period and inserting in lieu thereof ", or"; and

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(3) by adding at the end thereof the following: "(3) an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication, if (A) such advertisement is not materially false or misleading in its description of the publication; and contains no material misrepresentations of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication and any opinions expressed about such publication, and (c) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme.".

(c) Section 3005 of title 39, United States Code, is amended by adding at the end thereof the following new subsection:

"(e)(1) In conducting an investigation to determine if a person is engaged in any of the activities covered by subsection (a) of this section, the Postmaster General (or any duly authorized agent of the Postmaster General) may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails.

"(2) A failure to provide the article or service offered after the Postmaster General or his agent has tendered the money or property in the manner described in paragraph (1) of this subsection, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of this section has occurred.

"(3) The Postmaster General shall prescribe regulations under which any individual seeking to make a purchase on behalf of the Postal Service under this subsection from any person shall—

"(A) identify himself as an employee or authorized agent of the Postal Service, as the case may be;

"(B) state the nature of the conduct under investigation; and

"(C) inform such person that the failure to complete the transaction may be considered in a proceeding to determine probable cause, in accordance with paragraph (2) of this subsection.".

INVESTIGATIVE AUTHORITY

SEC. 3. (a) Chapter 30 of title 39, United States Code, is amended by adding after section 3005 the following new section:

"§ 3005a. Investigative authority

"(a) Whenever the Postmaster General or his designee has reason to believe that any person may be in possession, custody, or control of any documentary materials relevant to the investigation of an alleged violation of section 3005 of this title, he may issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

"(b) Each such demand shall—

"(1) state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable thereto;

"(2) describe the class or classes of documentary material to be produced thereunder which such definiteness and certainty as to permit such material to be fairly identified;

"(3) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction;

"(4) identify the custodian to whom such material shall be made available; and

"(5) inform such person of his rights and privileges with respect to such materials, as well as the potential results of a failure to comply with such demand under subsections (g) and (k) of this section.

"(c) No such demand shall—

"(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation;

"(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigator; or

"(3) be issued in any investigation—

"(A) after the Postal Service has instituted statutory proceedings in connection with the alleged violation of section 3005 of this title; or

"(B) after a proceeding has been instituted under title 18, United States Code, involving matters within the purview of such investigation.

"(d) Service of any such demand or any petition filed under this section may be made upon a person by—

"(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person:

"(2) delivering a duly executed copy thereof to the principal officer or place of business of the person to be served; or

"(3) depositing such copy in the United States mail, by registered or certified mail, duly addressed to such person at its principal office or place of business.

"(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f)(1) The Postmaster General or his designee shall designate a postal investigator to serve as custodian of documentary materials and such additional postal investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

"(2) Subject to the exercise of any of the rights or privileges referred to in subsection (b)(5) of this section, any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

"(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this section. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Postmaster General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Postmaster General or his designee or a Department of Justice attorney having responsibility in proceedings under this chapter. Under such reasonable terms and conditions as the Postmaster General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

"(4) Whenever any attorney has been designated to appear on behalf of the Postal Service in any proceeding under section 3005 or 3007 of this title, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in such proceeding on behalf of the Postal Service. Upon the conclusion of any such proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of the body conducting such proceeding through the introduction thereof into the record of such proceeding.

"(5) Upon the completion of—

"(A) the investigation for which any documentary material was produced under this section, and

"(B) any proceeding under section 3005 of this title arising from such investigation (including a related proceeding under section 3007 of this title),

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Postmaster General or his designee or a Department of Justice attorney pursuant to this subsection which

has not passed into the control of the body conducting such proceeding through the introduction thereof into the record of such proceeding.

"(6) When any documentary material has been produced by any person under this section for use in any investigation described in subsection (a) of this section, and no such proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Postmaster General or his designee, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

"(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Postmaster General or his designee shall promptly—

"(A) designate another postal investigator to serve as custodian thereof, and

"(B) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

"(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Postmaster General or his designee may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

"(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

"(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

"(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

"(k) A failure to comply with an investigative demand as deemed proper and ordered by the appropriate district court of the United States under this section, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of section 3005 of this title has occurred.

"(l) As used in this section, 'postal investigator' means any Postal Service attorney or investigator who is charged with the duty of enforcing or carrying into effect section 3005 or 3007 of this title.".

(b) The analysis for chapter 30 of title 39, United States Code, is amended by inserting after the item relating to section 3005 the following new item:

"3005a. Investigative authority.".

CIVIL PENALTIES; SEMIANNUAL REPORTS

SEC. 4. (a) Chapter 30 of title 39, United States Code, is amended by adding after section 3011 the following new sections:

"§ 3012. Civil penalties

"(a) Any person—

"(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or 3005(a)(2) of this title;

"(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

"(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

"(b)(1) Whenever, on the basis of any information avilable to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the Postal Service may commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which such conduct occurred or in which the defendant resides, transacts business, or receives mail.

"(2) If the district court determines that a person has engaged, or is engaged, in such conduct, the court shall determine the amount of any civil penalty under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect or ability to conduct lawful business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

"(c) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

"§ 3013. Semiannual reports on investigative activities of the Postal Service

"The Postmaster General shall submit semiannual reports to the Board summarizing the investigative activities of the Postal Service. Each such report shall be submitted within sixty days after the close of the reporting periods ending March 31 and September 30, respectively, and shall include with respect to the reporting period involved—

"(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

"(2) the number of cases in which the purchasing authority described in section 3005(e) of this title was used, and the number of cases in which investigative demands were issued pursuant to section 3005a of this title;

"(3) the number of applications for temporary restraining orders or preliminary injunctions submitted under section 3007 of this title and, of those applications, the number granted;

"(4) the total expenditures and obligations attributable to investigative activities of the Postal Service; and

"(5) such other information relating to the investigative activities of the Postal Service as the Board may require.

Upon approval of a report submitted under the first sentence of this section, the Board shall transmit such report to the Congress.".

(b) Section 3012 of title 39, United States Code, as added by subsection (a), shall apply with respect to conduct which occurs on or after the date of the enactment of this Act.

(c) The analysis for chapter 30 of title 39, Unsted States Code, is amended by adding after the item relating to section 3011 the following new items:

"3012. Civil penalties.

"3013. Semiannual reports on investigative acivities of the Postal Service.".

CONSUMER EDUCATION PROGRAM ON SCHEMES INVOLVING FALSE REPRESENTATIONS

SEC. 5. (a) As soon as practicable after the date of the enactment of this Act, the Postmaster General or his designee, following consultation with respesentatives of the mail order industry, shall develop and carry out a program designed to provide consumer education to the public on schemes involving false representations through use of the mails, including the dissemination of information on recognizing practices commonly associated with such schemes, as well as appropriate measures to take upon receiving mail matter which the individual believes may be part of such a scheme.

(b) A summary of any activities carried out under subsection (a) shall be included in each annual report rendered by the Postmaster General under section 2402 of title 39, United States Code.

SEC. 6. Section 202(b) of title 39, United States Code, is amended by adding at the end thereof the following new sentence: "A Governor may serve during the term following the expiration of his term until his successor has taken office.".

EXPLANATION OF AMENDMENT

The explanation of the provisions of the amendment is contained in the explanation of the bill in this report.

PURPOSE

The purpose of this bill is to protect the public from being injured by false representation schemes which utilize the mails. This purpose is to be achieved by increasing the investigatory and enforcement powers of the Postal Service while preserving the rights of individuals and guaranteeing proper use of these powers.

COMMITTEE ACTION

H.R. 7044 was introduced by Representatives Claude Pepper, William D. Ford, and Mickey Leland on August 19, 1982, following five days of hearings by the Subcommittee on Postal Personnel and Modernization on an earlier House version of this legislation, H.R. 3973, and on the Senate-passed version of this legislation, S. 1407. H.R. 3973 was cosponsored by some 300 Members of the House.

The subcommittee held hearings on May 20, June 3, July 15, July 20, and July 22, 1982. Oral and written testimony was received from a wide range of individual and organizational witnesses, from both the public and private sectors. Every request to testify personally was granted by the subcommittee.

On September 15, 1982, the subcommittee ordered H.R. 7044 reported to the full Committee on Post Office and Civil Service by a record vote of 6 to 1.

On September 22 and September 28, 1982, the full Committee on Post Office and Civil Service held markup sessions on H.R. 7044. On September 28, 1982, the committee, by a division vote of 13 to 1, ordered H.R. 7044 reported to the House with one amendment striking all after the enacting clause and substituting the provisions of the bill as amended by the committee.

Statement

The problem

With the dynamic growth of the legitimate mail order industry in recent years (currently a $25.8-billion-a-year industry), there has been, disturbingly and unfortunately, a corresponding growth in the number of fraudulent and deceptive schemes which utilize the mails to trick and swindle the public out of huge sums of their hard-earned money.

The Postal Service is presently receiving mail fraud complaints from the public at the rate of approximately 200,000 each year. As the number of schemes has increased, so has the sophistication of their operators. Tragically, it is apparent that these unscrupulous persons have coldly and cynically targeted as their most likely victims the most vulnerable members of our society: the elderly, the infirm, the unemployed and the underemployed, and the disadvantaged. A comprehensive study by the House Select Committee on Aging, chaired by the Honorable Claude Pepper, has shown that these schemes have reached "epidemic" proportions—with particularly harsh impact upon the elderly. For example, some 60 percent of mail order medical quackery victimizes the elderly. The Aging Committee study also shows that operators of work-at-home schemes and real estate frauds prey voraciously upon the elderly.

That the United States mails are being used as the principal means of conducting this reprehensible activity presents another type of lesser, but still important, problem. The Postal Service witness before this committee's Subcommittee on Postal Personnel and Modernization hearing on July 22, 1982, summarized it as follows:

> The legislation you are considering represents a Congressional effort to do something about this serious and growing problem. The Postal Service supports this effort. Any public perception that the mails are becoming a haven for deceptive merchandising schemes reflects unfavorably on the legitimate mail-order businessman and on the Postal Service as an institution. It tends to undermine confidence in the integrity of the mails, which is necessary for the postal system to continue to grow and prosper in serving public needs into the future.
>
> Because the public looks to the Postal Service for protection against these kinds of schemes, we have another interest at stake, too. When our ability to deal with these problems does not measure up to the expectations of those who look to us to do something about them, the Postal Service may tend to be blamed unfairly for failing to prevent this type of illegal activity from flourishing and growing.

The committee is convinced of the imperative need to better protect the public from being victimized by mail order schemes. The committee is also convinced, as the committee of primary legislative and oversight responsibility for the postal system, that the integrity of that system—and public confidence in it—must be preserved.

The cause

Why have the Postal Service and other Federal authorities been unable to check the growth of mail order schemes? The problem is not

a new one. Indeed, the basic "false representation" provision in today's postal law (39 U.S.C. 3005) dates back to 1872. Then, as now, the civil statute proscribes the conduct of any "scheme or device" for obtaining money through the mails by means of "false representation." There is agreement that today's proliferating mail order schemes are not the product of any flaw in this basic prohibitory language (which has been refined by over a century of case law). The problem is the lack of effective means to enforce it. Under existing law, the Postal Service's only real enforcement tool under 39 U.S.C. 3005 is to seek a "stop mail" order, which may be issued only after a hearing is held before an Administrative Law Judge pursuant to the Administrative Procedure Act.

The Postal Service also has authority in the most grievous cases to seek from a U.S. district court, pending the outcome of administrative proceedings, a temporary mail detention order under 39 U.S.C. 3007. But, as succinctly stated by the Department of Justice in presenting its views on the original legislation (H.R. 3973) to the committee, these provisions have not been enough to prevent injury to the public:

> At present, while the Postal Service can order a mail stop for such a scheme, the promoter is free to change his name and obtain a new post office box to continue the same scheme. The Postal Service can only commence another hearing process pursuant to 39 U.S.C. 3005(a) which is a slow process and which, even if successful, can be defeated once again by the promoter changing his name and obtaining a new post office box. Moreover, experienced promoters of such schemes often fail to deliver the product or service for a certain period following its advertisement in the mails knowing that the Postal Service polices such advertisements by making attempts to covertly purchase such product or service. The failure to deliver such product or service effectively curtails the Postal Service's ability to test such product or service and to obtain, where warranted, a temporary restraining order from a district court pursuant to 39 U.S.C. 3007(a) until after most of the victims have placed their orders, and the mail has been received by the promoter.

The existing civil enforcement mechanism is simply not geared to coping with today's sophisticated mail order schemes—which are characterized by ever-increasing speed, "hit-and-run" proficiency, and ruthlessness. Too often, by the time an operator is shut down (or, as is more likely under existing law, has moved his scheme to another part of the country), the public has paid a heavy price.

It has become clear that, if the public is to be better protected, the investigatory process must be accelerated and enforcement tools made more effective. Three major shortcomings are evident.

1. The Postal Service is unable to solicit or obtain an advertised product or service for testing or evidentiary purposes. The Postal Service witness on July 22 summarized the problem this way:

> The only way the law can be enforced against many types of schemes is for inspectors to order an advertised product and wait for it to come through the mails like everyone else.

> More and more operators are finding that all they have to do to avoid the effect of the law is to postpone mailing advertised products until they already have most of the orders and money they expect to receive. At that point a mail-stop order is worth little and the Postal Service is powerless to help the victims of the scheme.

2. The Postal Service has no civil authority to investigate suspicious advertisements in a timely and effective manner. Today even when the Postal Services' experienced inspection personnel recognize the most elemental "trigger" phrases in suspicious advertising copy—e.g., "amazing, documented results"; "thousands of miracle cures"; "make a fortune working at home"; "prime investment property at give-away prices"—they are unable to move quickly and find out (until it is too late) whether the advertiser can substantiate his claims, or even deliver the offered product or service.

3. The existing civil statute has little deterrent effect. As the Department of Justice statement above indicates, the "stop mail" order, even when it is finally imposed, is easily circumvented. The unscrupulous operator may simply resume his scheme in a new area, or in the same area under a new name at a new address. And the public keeps paying the price.

The proposed solution

As the result of his Aging Committee's extensive hearings and its thorough analysis of the problem, Chairman Claude Pepper on June 18, 1981, introduced H.R. 3973, a bill designed to plug the holes in existing law and give the Postal Service broad new investigatory and enforcement powers. H.R. 3973 quickly attracted some 300 House cosponsors. On May 19, 1982, the Senate passed and sent to the House its version of the legislation, S. 1407, a measure very similar to H.R. 3973. Both bills contained the same basic provisions: "civil investigative demand" authority for documents relating to alleged postal offenses; "purchase authority" for advertised products and services; authority to seek "cease and desist" orders against persons engaged in running mail order schemes; and authority to seek civil penalties against those who violate "false representation" orders. Both of these bills were referred to the Committee on Post Office and Civil Service.

During five days of hearings and in numerous written statements received for the record, the committee's Subcommittee on Postal Personnel and Modernization considered the views of a broad cross-section of witnesses. The committee's analysis of the testimony confirmed the need for the legislation: too many people are being hurt by mail order schemes because of huge gaps in the Postal Service's existing investigatory and enforcement authority. But the committee's analysis also uncovered a significant element of apprehension about over-reacting to a legitimate need, and giving the Postal Service too much authority. The committee was persuaded by testimony from the American Bar Association, the Magazine Publishers Association, the American Civil Liberties Union, and others, that H.R. 3973 and S. 1407 required refinement. Discussions among all concerned ensued, and the result is the bill which the committee is now favorably reporting to the House, H.R. 7044.

H.R. 7044

H.R. 7044 was introduced on August 19, 1982, by Chairman Pepper, Post Office and Civil Service Committee Chairman William D. Ford, and Postal Personnel and Modernization Subcommittee Chairman Mickey Leland.

The committee believes that H.R. 7044, as reported, strikes the necessary balance between the need to crack down more effectively on mail order schemes and the need to protect individual rights and liberties. The committee is confident that H.R. 7044, as reported, gives the Postal Service the new investigatory and enforcement powers it must have in order to better protect the public, but it also builds in safeguards against any possible abuse of those powers. A summary of the bill's major provisions follows:

The bill amends 39 U.S.C. 3005 to provide that the Postal Service may issue orders to require persons to "cease and desist" from engaging in false representation schemes. Such an order could only be issued after a full adversarial hearing before an Administrative Law Judge. This, coupled with the new civil penalty authority granted by another provision of H.R. 7044, should provide the deterrent effect missing from current law. It should also aid in shutting down the more mobile operators who have perfected the "art" of evading "stop-mail" orders.

The bill also amends 39 U.S.C. 3005 to permit the Postmaster General or his agent to tender to the advertiser the price of any item or service advertised through the mail. The Postal Service agent must accurately identify himself, state the nature of the conduct under investigation, and inform the advertiser that failure to complete the transaction may be presented to a court as a factor to be weighed by the court in deciding whether there is probable cause to issue a temporary stop-mail order under the existing provisions of 39 U.S.C. 3007. This provision should help the Postal Service speed its investigations, but without raising the due process concerns which the Department of Justice cited in its objections to the original bill, H.R. 3973.

The bill grants to the Postmaster General or his designee the authority to issue "civil investigative demands" for documentary materials relevant to false representation investigations under 39 U.S.C. 3005. (The original bill, H.R. 3973, was extremely broad, giving demand authority for *any* investigation of *any* postal matter.) This new authority may be used only under the extensive and explicit conditions contained in the bill. This provision is modeled on the Justice Department's civil investigative demand authority in 18 U.S.C. 1968 and is similar to the statutory authority possessed by the Federal Trade Commission, the Department of the Treasury, and Inspectors General of Federal agencies. In addition, H.R. 7044 provides to the subject of the demand explicit rights of prior notice, notification of all rights and privileges with respect to the demand, and the explicit right to seek to quash the demand. Only a U.S. district court has the authority under this bill to compel compliance with an investigative demand. As with the "purchase authority" provision, the civil investigative demand authority should be of significant assistance in speeding

investigations and more quickly shutting down violators. A typical use is expected to be for the verification of advertising claims which use phrases such as "amazing test results" or "documented miracle cures", which in their context raise suspicions. The committee also expects, however, that this new authority will be used prudently and judiciously.

The bill provides for civil penalties for violators of false representation orders issued pursuant to 39 U.S.C. 3005 (including the new "cease and desist" orders). Only a U.S. district court may enforce such penalties (which may be in an amount up to $10,000 per day), and then only after the court makes an independent determination that the subject person is engaging in, or has engaged in, violative conduct. The court shall determine the amount of the penalty, if any. All penalties will be paid into the General Treasury of the United States.

The bill requires detailed, twice-yearly reports to the U.S. Postal Service Governors and to the Congress on the investigative activities of the Postal Service and requires the Postmaster General to develop and carry out an extensive consumer education program as a positive means of helping prevent violations and protect the public. The committee views the reporting requirement as an extremely important provision of the bill, and intends to use the reports as a primary means of closely monitoring the Postal Service's use of the new authority granted by H.R. 7044.

Sectional Analysis

Section 1 of the bill provides for a short title: "The Mail Order Consumer Protection Amendments of 1982".

Section 2(a) of the bill amends 39 U.S.C. 3005(a) to provide that the Postal Service may issue orders to require persons to cease and desist from engaging in false representation schemes. Such orders—as with the Postal Service's existing authority to issue "stop mail" and "stop payment" orders under section 3005—may be issued only after opportunity has been given for a hearing on the record pursuant to the Administrative Procedure Act. The committee recognizes that this grant of *in personam* jurisdiction is a significant addition to the Postal Service's enforcement powers. The committee is persuaded, however, that this grant of new authority is necessary if the purpose of this bill is to be achieved. By means of the twice-yearly reporting requirements contained in section 4 of this bill, the committee will monitor closely the Postal Service's use of these "cease and desist" orders.

Section 2(b) of the bill amends 39 U.S.C. 3005(d), adding a new paragraph (3) to provide that nothing in section 3005 shall prohibit the mailing of an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication, if (A) such advertisement is not materially false or misleading in its description of the publication, and contains no material misrepresentations of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication, and (C) neither the publication nor the advertisement is

designed to promote the sale of some other product as part of a commercial scheme. This new paragraph (3) is intended to preclude the Postal Service from bringing cases against persons who market books and other publications through the mails by means of advertisements that are materially false or misleading in their description of the book or other publication.

Nothing in this section is intended to permit actions by the Postal Service that are founded on the theory that an advertisement for a book or publication contains a material misrepresentation of fact where representation in the advertisement consists of no more than a description of the contents of the book or publication, which description is a materially correct description of the contents of the book or publication. This new paragraph (3) is not intended to preclude the Postal Service from bringing cases against firms which market various moneymaking opportunities, such as, but not limited to, the traditional envelope-stuffing schemes, and the more current promotions on how to obtain credit cards without a credit check or how anyone may obtain a signature loan by mail.

Section 2(c) of the bill amends 39 U.S.C. 3005 by adding a new subsection (e) to provide that, in conducting an investigation to determine if a person is engaged in a false representation scheme or any of the other activities covered by subsection (a) of section 3005, the Postmaster General or his duly authorized agent may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails. The committee is persuaded that this new "purchase authority" will be a valuable and effective means of speeding investigations and protecting the public from injury. The new subsection (e)(2) provides further that a failure to provide the offered article or service after the Postmaster General or his agent has reasonably tendered the money or property may be considered by the court (along with any reasons for such failure) in determining whether, for purposes of deciding whether to issue a temporary mail detention order pursuant to 39 U.S.C. 3007, there is probable cause to believe a violation of 39 U.S.C. 3005 has occurred. The new section 3005(e)(3) as added by section 2(c) of the bill requires the Postmaster General to prescribe regulations guaranteeing that the Postal Service agent tendering the price must accurately identify himself, state the nature of the conduct under investigation, and inform the person that failure to complete the transaction may be presented to a court as a factor to be weighed by the court in deciding whether there is probable cause to issue a temporary mail detention order under 39 U.S.C. 3007.

Section 3(a) of the bill amends chapter 30 of title 39, U.S.C., by adding a new section 3005a to provide for new authority in investigating alleged violations of 39 U.S.C. 3005. The new section 3005a grants to the Postmaster General or his designee—under the explicit and extensive conditions contained in the section—the authority to issue civil investigative demands for documentary materials relevant to these investigations. The authority granted by this section is modeled on the Justice Department's civil investigative demand authority as contained in 18 U.S.C. 1968, and is similar to the statutory authority pos-

sessed by the Federal Trade Commission, the Department of the Treasury, and Inspectors General of Federal agencies. The provisions of the new 39 U.S.C. 3005a are intended to conform to the holdings of a line of U.S. Supreme Court cases setting forth the parameters of validity for an administrative subpoena or civil investigative demand for documents (as opposed to an actual physical entry and search of premises). The committee wishes to emphasize its intent that the Postal Service use this new civil investigative demand authority prudently and judiciously.

The new 39 U.S.C. 3005a(a) provides that whenever the Postmaster General or his designee has reason to believe that any person may be in possession, custody, or control of any documentary materials relevant to the investigation of an alleged violation of 39 U.S.C. 3005, he may issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination. The committee wishes to emphasize the requirement of relevance.

The new 39 U.S.C. 3005a(b) sets forth the requirement for the content of each demand. Each demand must: (1) state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable thereto; (2) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified; (3) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; (4) identify the custodian to whom such material shall be made available; and (5) inform such person of his rights and privileges with respect to such materials, as well as the potential results of a failure to comply with such demand under subsection (g) and (k) of the new 39 U.S.C. 3005a. With regard to the latter requirement concerning rights, privileges, and potential results, the committee specifically intends that, whenever personal service of a demand is made under 39 U.S.C. 3005a(d)(1) or 39 U.S.C. 3005a(d)(2), the written notice to the person shall be accompanied whenever possible by an understandable verbal notice of those rights, privileges, and potential results. The committee further intends that the written notice of rights, privileges, and potential results be conspicuous in every instance.

The new 39 U.S.C. 3005a(c) sets forth certain prohibitions concerning the content and issusance of civil investigative demands. No such demand shall: (1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation; (2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation; or (3) be issued in any investigation after the Postal Service has instituted statutory proceedings in connection with the alleged 39 U.S.C. 3005 violation, or after a criminal proceeding has been instituted under title 18, U.S.C., involving matters within the purview of the investigation. The committee wishes to emphasize its intent that civil investigative demands are to be used only in con-

nection with investigations of alleged violations of 39 U.S.C. 3005, and that documentary materials obtained by means of a civil investigative demand may not be used as evidence in criminal prosecutions.

The new 39 U.S.C. 3005a(d) specifies the methods by which service may be made: (1) by delivering a duly executed copy to any partner, executive officer, managing agent, or general agent of the subject person, or to any agent authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person; (2) by delivering a duly executed copy to the principal office or place of business of the person to be served; or (3) by depositing it in the United States mail, by registered or certified mail, duly addressed to the subject's principal office or place of business.

The new 39 U.S.C. 3005a(e) provides that a verified return by the individual making service setting forth the manner of service shall be prima facie proof of service. In the case of service by registered or certified mail, the verified return must be accompanied by the postal return receipt.

The new 39 U.S.C. 3005a(f) provides for detailed procedures and requirements to govern the obtaining and use of the documentary materials which are the object of a civil investigative demand. Subsection (f)(1) requires the Postmaster General or his designee to designate a postal investigator to serve as custodian of the materials. Subsection (f)(2) provides that, subject to the exercise of his own rights and privileges, the person to whom the demand is issued shall make the materials available to the custodian for inspection and copying or reproduction at the person's principal place of business (or at any other agreed-to or court-directed place) on the date specified in the demand (or a later date if prescribed in writing by the custodian). By written agreement between the person and the custodian, copies may be substituted for all or part of the originals of the demanded materials. Subsection (f)(3) specifies that the custodian shall take physical possession of the materials and shall take responsibility for their use and for their return. The custodian may cause copies of the materials to be made for official use under regulations to be prescribed by the Postmaster General. While in the possession of the custodian, the materials shall not be made available for examination, absent the consent of the persons who produced the material, by any individual other than the Postmaster General or his designee or a Department of Justice attorney having responsibility in proceedings under chapter 30 of title 39, U.S.C. The Postmaster General shall prescribe reasonable terms and conditions under which the person who produced the materials (or his representative) may examine them while they are in possession of the custodian.

Subsection (f)(4) provides that whenever any attorney has been designated to appear on behalf of the Postal Service in any proceeding under section 3005 or 3007 of this title, the custodian may deliver to the attorney any documentary material in the custodian's possession which the attorney determines to be required for use in the proceeding on behalf of the Postal Service. Upon the conclusion of the proceeding, the attorney shall return to the custodian any material which has not passed into the control of the body conducting the proceeding (e.g., the court) through its introduction into the record

of the proceeding. Subsection (f)(5) provides that, upon the completion of the investigation for which the material was produced and the completion of any 39 U.S.C. 3005 or 39 U.S.C. 3007 proceeding arising from the investigation, the custodian shall return the material to the person who produced it (other than copies made by the Postmaster General or his designee or a Department of Justice attorney pursuant to subsection (f) and material which has passed into the control of the body conducting the proceeding through its introduction into the record of the proceeding). Subsection (f)(6) provides that, when any documentary material has been produced by any person pursuant to a civil investigative demand for use in any investigation of an alleged 39 U.S.C. 3005 violation, and no proceeding arising from the investigation has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of the investigation, the person shall be entitled, upon written demand made upon the Postmaster General or his designee, to the return of all documentary material which he produced, other than copies made pursuant to subsection (f). Subsection (f)(7) provides that in the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under 3005a, or the official relief of the custodinan from responsibility for the custody and control of such material, the Postmaster General or his designee shall promptly designate another postal investigator to serve as custodian of the material, and transmit notice in writing to the person who produced the material as to the identity and address of the successor custodian. Any successor so designated shall have with regard to the materials all duties and responsibilities imposed by section 3005a upon his predecessor, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

The new 39 U.S.C. 3005a(g) provides that whenever any person fails to comply with any civil investigative demand duly served upon him under section 3005a, or whenever satisfactory copying or reproduction of any subject material cannot be done and such pension refuses to surrender such material, the Postmaster General or his designee may file in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon the person, a petition for an order of such court for the enforcement of the demand (except that if the person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in any other district in which such person transacts business as may be agreed upon by the parties to the petition). The committee wishes to emphasize that the Postmaster General or his designee may issue a civil investigative demand, but only a court may enforce it.

The new 39 U.S.C. 3005a(h) guarantees the person who is the subject of the demand the right to seek to quash the demand. Within 20 days after the service of any demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, the person may file, in the district court of the United States for the judicial district within which the person resides, is found, or

transacts business, and serve upon such custodian, a petition for an order of the court modifying or setting aside the demand. The time allowed for compliance with the demand, in whole or in part, as deemed proper and ordered by the court, shall not run during the pendency of the petition in the court. The petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person.

The new 39 U.S.C. 3005a(i) provides another explicit right to the person who is the subject of the demand. At any time during which a custodian is in custody or control of documentary material delivered by a person in compliance with a civil investigative demand, that person may file, in the district court of the United States for the judicial district within which the office of the custodian is situated, and serve upon the custodian, a petition for an order of the court requiring the custodian to perform any duty imposed upon him by section 3005a.

The new U.S.C. 3005a(j) provides that whenever any petition is filed in any district court of the United States under section 3005a, the court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of section 3005a.

The new 39 U.S.C. 3005a(k) provides that failure to comply with a civil investigative demand as deemed proper and ordered by the appropriate district court of the United States under section 3005a, and any reasons for such failure, may be considered by a court in a proceeding held under section 3007 of title 39, U.S.C., to determine if there is probable cause to believe that a violation of section 3005 of this title has occurred. Under 39 U.S.C. 3007, a United States district court, if it determines that there is probable cause to believe that 39 U.S.C. 3005 is being violated, may issue a temporary mail detention order pending the outcome of 39 U.S.C. 3005 proceedings.

The new 39 U.S.C. 3005a(1) defines the term "postal investigator" for purposes of section 3005a.

Section 3(b) of the bill amends and conforms the analysis for chapter 30 of title 39, U.S.C., to reflect the addition of the new section 3005a.

Section 4(a) of the bill provides authority for what the committee hopes will be a significant new deterrent to false representation activity: civil penalties. A new 39 U.S.C. 3012 provides that a person shall be liable to the United States for a civil penalty if he: (1) through the use of the mail, evades or attempts to evade the effect of a "stop mail" or "stop payment" order issued under 39 U.S.C. 3005(a)(1) or 39 U.S.C. 3005(a)(2); or (2) fails to comply with a "cease and desist" order issued under 39 U.S.C. 3005(a)(3); or (3) (unless he is a publisher of a newspaper or other periodical publication) has actual knowledge of such 39 U.S.C. 3005(a) order, is in privity with any person evading, attempting to evade, or failing to comply with such order, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail. The penalty shall be in an amount not to exceed $10,000 for each day that the person engages in such conduct.

A separate penalty may be assessed with respect to each type of conduct described by section 3012. As described below, only a court may impose these civil penalties.

The new 39 U.S.C. 3012(b) sets forth the procedures for determining whether a penalty should be imposed and, if so, how much. Subsection (b)(1) provides that, when the Postal Service finds that a person has engaged in, or is engaging in, conduct described in 39 U.S.C. 3012(a), it may commence a civil action in the appropriate U.S. district court to enforce the established civil penalties. Subsection (b)(2) provides that the court shall first determine whether the person is engaging in or has engaged in such conduct. If the court determines that a penalty is justified, it shall then determine the amount of the penalty, taking into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, his ability to pay, effect on his ability to conduct lawful business, history of prior violations, the degree of culpability, and such other matters as justice may require.

The new 39 U.S.C. 3012(c) provides that all penalties collected under authority of section 3012 shall be paid into the Treasury of the United States.

Section 4 of the bill also adds a new 39 U.S.C. 3013, requiring twice-yearly reports to the Congress on the investigative activities of the Postal Service. The committee wishes to emphasize the importance it attaches to this reporting requirement. Significant new powers are being granted to the Postal Service under this bill to enable it to better deal with a serious national problem. The committee, by means of these reports and other oversight tools, intends to carefully monitor the Postal Service's use of these new powers to ensure that they are being used properly and effectively. The committee also wishes to emphasize its desire that the Governors of the Postal Service maintain close and active supervision of the use of these new powers and of the Postal Service's conduct of investigative activities in general. The new 39 U.S.C. 3013 provides that the Postmaster General shall submit semiannual reports to the Postal Service Board of Governors summarizing the investigative activities of the Postal Service. Each such report shall be submitted within 60 days after the close of the reporting periods ending March 31 and September 30, respectively, and shall include with respect to the reporting period involved: (1) a summary of any proceedings instituted under 39 U.S.C. 3005, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period; (2) the number of cases in which the purchasing authority described in the new 39 U.S.C. 3005(e) was used, and the number of cases in which civil investigative demands were issued pursuant to the new 39 U.S.C. 3005a; (3) the number of applications for temporary restraining orders or preliminary injunctions submitted under 39 U.S.C. 3007 (i.e., temporary mail detention orders) and, of those applications, the number granted; (4) the total expenditures and obligations attributable to investigative activities of the Postal Service; and (5) such other information relating to the investigative activities of the Postal Service as the Board may require. Upon approval of each report submitted under this new section, the Board shall transmit it to the Congress.

Section 4(b) of the bill provides that the new 39 U.S.C. 3012 shall apply with respect to conduct which occurs on or after the date of enactment.

Section 4(c) of the bill amends and conforms the chapter analysis for chapter 30 of title 39, U.S.C., to reflect the addition of the new sections 3012 and 3013.

Section 5(a) of the bill is intended by the committee to be a positive means of helping achieve the purpose of this bill: to protect the public from being injured by false representation schemes. Section 5(a) requires that, as soon as practicable after enactment, the Postmaster General or his designee, following consultation with representatives of the mail order industry, shall develop and carry out a program designed to provide consumer education to the public concerning schemes involving false representations through use of the mails. The program shall include the dissemination of information on recognizing practices commonly associated with such schemes, as well as information on appropriate measures to take upon receiving mail matter which the recipient believes may be part of such a scheme.

Section 5(b) of the bill requires that a summary of consumer education activities be included in the regular annual report of the Postmaster General.

Section 6 of the bill provides that a Postal Service Governor may serve during the term following expiration of his term until his successor has taken office. Because of the important oversight responsibility which the Governors have over the exercise of the new Postal Service powers granted by this bill, it is essential that all nine Governors' seats be filled continuously.

Cost

The committee concurs with the estimate provided by the Congressional Budget Office. The cost estimate prepared by the Congressional Budget Office is set forth below:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 29, 1982.

Hon. William D. Ford,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7044, the Mail Order Consumer Protection Amendments of 1982, as ordered reported by the House Committee on Post Office and Civil Service, September 28, 1982.

H.R. 7044 would strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain inspection authority as well as establishing civil penalties for various mail order violations. It is expected that enactment of H.R. 7044 would result in no cost to the federal government.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Raymond C. Scheppach
(For Alice M. Rivlin, Director).

OVERSIGHT

Under the rules of the House, the Committee on Post Office and Civil Service is vested with legislative and oversight jurisdiction over the subject matters of this legislation. As a result of its hearings, investigation, and consideration, the committee concluded that there is ample justification for enacting this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause (2)(l)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 7044 will have no inflationary impact on the national economy.

ADMINISTRATIVE VIEWS

Set forth below is a letter from the Department of Justice concerning H.R. 7044.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., September 21, 1982.

Hon. WILLIAM D. FORD,
Chairman, Committee on the Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for views of the Department of Justice on H.R. 7044, a bill "to amend title 39, United States Code, to strengthen the investigatory and enforcement powers of the Postal Service by authorizing certain inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes."

This bill supersedes H.R. 3973, to which this Department had previously stated objections. Since H.R. 7044 has corrected the problems we had with H.R. 3973, we have no objection to the passage of this legislation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General,
Office of Legislative Affairs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 39, UNITED STATES CODE

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PART I—GENERAL

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CHAPTER 2.—ORGANIZATION

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§ 202. Board of Governors

(a) * * *

(b) The terms of the 9 Governors shall be 9 years, except that the terms of the 9 Governors first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 1 year, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, 1 at the end of 5 years, 1 at the end of 6 years, 1 at the end of 7 years, 1 at the end of 8 years, and 1 at the end of 9 years, following the appointment of the first of them. Any Governor appointed to fill a vacancy before the expiration of the term for which his predecessor was appointted shall serve for the remainder of such term. *A Governor may serve during the term following the expiration of his term until his successor has taken office.*

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PART IV—MAIL MATTER

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CHAPTER 30.—NONMAILABLE MATTER

Sec.

3001. Nonmailable matter.
3002. Nonmailable motor vehicle master keys.
3003. Mail bearing a fictitious name or address.
3004. Delivery of mail to persons not residents of the place of address.
3005. False representations; lotteries.
3005a. Investigative authority.
3006. Unlawful matter.
3007. Detention of mail for temporary periods.
3008. Prohibition of pandering advertisements.
3009. Mailing of unordered merchandise.
3010. Mailing of sexually oriented advertisements.
3011. Judicial enforcement.
3012. Civil penalties.
3013. Semiannual reports on investigative activities of the Postal Service.

* * * * * * *

§ 3005. False representations; lotteries

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under section 3001(d) of this title, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or person property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender; [and]

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal note[.]*; and*

(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.

For the purposes of the preceding sentence, the mailing of matter which is nonmailable under such section 3001(d) by any person shall constitute prima facie evidence that such person is engaged in conducting a scheme or device for obtaining money or property through the mail by false representations.

* * * * * * *

(d) Nothing in this section shall prohibit the mailing of (1) a newspaper of general circulation containing advertisements, lists of prizes, or information concerning a lottery conducted by a State acting under authority of State law, published in that State, or in an adjacent State which conducts such a lottery, [or] (2) tickets or other materials concerning such a lottery within that State to addresses within that State. For the purposes of this subsection, "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States[.], *or (3) an advertisement promoting the sale of a book or other publication, or a solicitation to purchase or a purchase order for any such publication, if (A) such advertisement is not materially false or misleading in its description of the publication, and contains no material misrepresentation of fact, (B) the advertisement accurately discloses the source of any statements quoted or derived from the publication and any opinions expressed about such publication, and (C) neither the publication nor the advertisement is designed to promote the sale of some other product as part of a commercial scheme.*

(e)(1) In conducting an investigation to determine if a person is engaged in any of the activities covered by subsection (a) of this section, the Postmaster General (or any duly authorized agent of the Postmaster General) may tender, at any reasonable time and by any reasonable means, the price advertised or otherwise requested for any article or service that such person has offered to provide through the mails.

(2) A failure to provide the article or service offered after the Postmaster General or his agent has tendered the money or property in the manner described in paragraph (1) of this subsection, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of this section has occurred.

(3) The Postmaster General shall prescribe regulations under which any individual seeking to make a purchase on behalf of the Postal Service under this subsection from any person shall—

(A) identify himself as an employee or authorized agent of the Postal Service, as the case may be;

(B) state the nature of the conduct under investigation; and

(C) inform such person that the failure to complete the transaction may be considered in a proceeding to determine probable cause, in accordance with paragraph (2) of this subsection.

§ 3005a. Investigative authority

(a) Wherever the Postmaster General or his designee has reason to believe that any person may be in possession, custody, or control of any documentary materials relevant to the investigation of an alleged violation of section 3005 of this title, he may issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such materials for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction;

(4) identify the custodian to whom such material shall be made available; and

(5) inform such person of his rights and privileges with respect to such materials, as well as the potential results of a failure to comply with such demand under subsections (g) and (k) of this section.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation;

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation; or

(3) be issued in any investigation—

(A) after the Postal Service has instituted statutory proceedings in connection with the alleged violation of section 3005 of this title; or

(B) after a proceeding has been instituted under title 18, United States Code, involving matters within the purview of such investigation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof or to

any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail, duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Postmaster General or his designee shall designate a postal investigator to serve as custodian of documentary materials and such additional postal investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Subject to the exercise of any of the rights or privileges referred to in subsection (b)(5) of this section, any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this section. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Postmaster General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Postmaster General or his desginee or a Department of Justice attorney having responsibility in proceedings under this chapter. Under such reasonable terms and conditions as the Postmaster General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the Postal Service in any proceeding under section 3005 or 3007 of this title, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in such proceeding on behalf of the Postal Service. Upon the conclusion of any such proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of the body conducting such

proceeding through the introduction thereof into the record of such proceeding.

(5) Upon the completion of—

(A) the investigation for which any documentary material was produced under this section, and

(B) any proceeding under section 3005 of this title arising from such investigation (including a related proceeding under section 3007 of this title),

the custodian shall return to the person who produced such material all such material other than copies thereof made by the Postmaster General or his designee or Department of Justice attorney pursuant to this subsection which has not passed into the control of the body conducting such proceeding through the introduction thereof into the record of such proceeding.

(6) When any documentary material has been produced by any person under this section for use in any investigation described in subsection (a) of this section, and no such proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Postmaster General or his designee, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Postmaster General or his designee shall promptly—

(A) designate another postal investigator to serve as custodian thereof, and

(B) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Postmaster General or his designee may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal rights or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of sch court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(k) A failure to comply with an investigative demand as deemed proper and ordered by the appropriate district court of the United States under this section, and any reasons for such failure, may be considered in a proceeding held under section 3007 of this title to determine if there is probable cause to believe that a violation of section 3005 of this title has occurred.

(l) As used in this section, "postal investigator" means any Postal Service attorney or investigator of the Postal Service who is charged with the duty of enforcing or carrying into effect section 3005 or 3007 of this title.

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§ 3012. Civil penalties

(a) Any person—

(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under section 3005(a)(1) or section 3005(a)(2) of this title;

(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each day that such person engages in conduct

described by paragraph (1), (2), or (3) of this subsection. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.

(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), the Postal Service may commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which such conduct occurred or in which the defendant resides, transacts business, or receives mail.

(2) If the district court determines that a person has engaged, or is engaging, in such conduct, the court shall determine the amount of any civil penalty under this section, taking into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to conduct lawful business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(c) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

§ 3013. Semiannual reports on investigative activities of the Postal Service

The Postmaster General shall submit semiannual reports to the Board summarizing the investigative activities of the Postal Service. Each such report shall be submitted within sixty days after the close of the reporting periods ending March 31 and September 30, respectively, and shall include with respect to the reporting period involved—

(1) a summary of any proceedings instituted under section 3005 of this title, and the results of those and of any other such proceedings decided, settled, or otherwise concluded during such period;

(2) the number of cases in which the purchasing authority described in section 3005(e) of this title was used, and the number of cases in which investigative demands were issued pursuant to section 3005a of this ttile;

(3) the number of applications for temporary restraining orders or preliminary injunctions submitted under section 3007 of this title and, of those applications, the number granted;

(4) the total expenditures and obligations attributable to investigative activities of the Postal Service; and

(5) such other information relating to the investigative activities of the Postal Service as the Board may require.

Upon approval of a report submitted under the first sentence of this section, the Board shall transmit such report to the Congress.

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